



*GUIDELINES FOR
JUDICIAL OFFICERS
Avoiding the Appearance of Bias*

*Produced by the Judicial Council Advisory Committee on
Access and Fairness with the assistance of the Orange
County Bar Association Gender Equity Committee*

August, 1996

Do you see yourself here?

Have you ever:



Told an off-color joke in chambers?

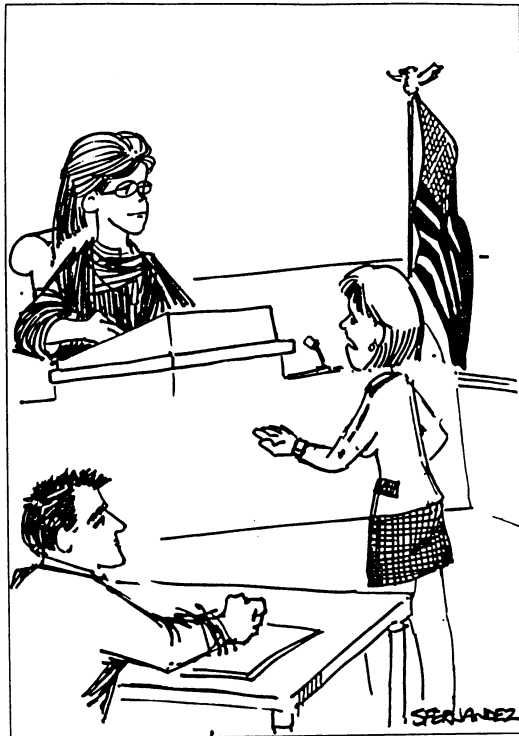
.....How about a dumb-blond joke?



**Remarked to a female attorney how
her family commitments might
interfere with her responsibilities to
the Court?**



**Hesitated to award a father primary
child custody or given a smaller
support order if the paying spouse is
the mother primarily because of their
gender?**



WITH ALL DUE RESPECT, YOUR HONOR...
I HAVE TO ASK YOU TO STOP REFERRING
TO THE DEFENDANT AS "THE HUNK"!



**Called a female lawyer "dear,"
"honey," "sweetie," "sweetheart,"
"darling"? How about "young lady,"
"missy," "little lady," "Miss America"?**



**Expressed surprise that a woman
would appear in court late in her
pregnancy?**

WELL, CONSIDER THIS:

According to a survey conducted in a large metropolitan legal community, California judges have done all that and more. Apparently we are not the enlightened, with-it bench of the 90's we thought we were.

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Lawyers who practice before us, the support personnel who work with us, and our very own colleagues report that we sometimes:

- / adopt a degrading and demeaning tone and attitude toward women*
- / give fathers a raw deal and are harder on male defendants in criminal matters*
- / afford less time for women in oral argument and find the same argument less persuasive when made by a woman*

**IT LOOKS LIKE WE
COULD REALLY USE
THESE GUIDELINES!**

“My investigation in this field has persuaded me that many irrational and harmful distinctions continue to be made in the legal, political and social treatment of the sexes in our country, that the resulting injustices have impeded our development as a nation, and that they have led to much personal unhappiness for American men as well as women.”

*Leo Kanowitz, Sex Roles in Law and Society
(University of New Mexico Press 1973)*

PREFACE

The purpose of this handbook is not to attempt to regulate anyone's private life, speech, communication or attitude, but to address those areas in which judicial officers must remember that they are perceived as the embodiment of the law. These guidelines are addressed specifically to judicial officers when acting in their official capacities in public situations or where they may be perceived as representatives of the legal community. They are aimed at eliminating gender bias from, and achieving gender equality in, our courts.

■■■■ WHAT IS GENDER BIAS? ■■■■

Gender bias is behavior or decision-making which is based on or reveals:

stereotypical attitudes about the nature and roles of men and women;

perceptions of their relative worth; or

myths and misconceptions about the social and economic realities encountered by both sexes.

*Judicial Council Advisory Committee
on Gender Bias in the Courts Report (1990)*

■■■■ WHY SHOULD WE CARE? ■■■■

**THERE ARE THREE GOOD
REASONS:**



**IT'S THE RIGHT
THING TO DO**



IT'S THE LAW



IT'S TIME

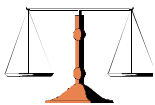
REASON # 1:

It's The Right Thing to Do!

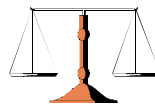
A courtroom free of gender bias:

- ✓ **enhances respect for the Court and the law**
- ✓ **fosters respect for the equality of both sexes**
- ✓ **promotes respect by participants for each other, leading to increased civility in the courtroom**





REASON # 2: It's The Law!



Canons 3B(5) and (6) of the California Code of Judicial Ethics (1996) provide that:

- ✓ **“[A] judge shall not, in the performance of judicial duties, by word or conduct manifest bias or prejudice... based upon... sex....”**
- ✓ **“A judge shall require lawyers in proceedings... to refrain from manifesting, by words or conduct, bias or prejudice based upon... sex....”**



Section 1(a) of the Standards of Judicial Administration (Appendix to the California Rules of Court Division 1) advises each judge:

- ✓ **“... in all courtroom proceedings, [to] refrain from and prohibit others from engaging in conduct that exhibits bias....”**



REASON # 3: It's Time!

Jurisdictions across the nation recognize that the time has finally come to eliminate gender bias in our courts.

- ★ The first gender bias task force was formed in 1982 by the New Jersey Supreme Court.**
- ★ Since then, task forces in over 40 states and several federal judicial circuits (including the Ninth Circuit) have been formed.**
- ★ In California, the Judicial Council Advisory Committee On Gender Bias conducted a statewide study and made recommendations to eradicate gender bias in the judicial system. To date, one half of the recommendations have been implemented.**

**■■■■ IT'S UP TO EACH OF US ■■■■
TO DO OUR PART**



Be consistent in your forms of address:
If a male attorney is referred to as "Mr.," a female attorney should not be referred to by her first name. Where the bailiff is referred to as "Deputy," the female clerk should not be referred to by first name. Professional titles such as "Doctor" or "Professor" should be used to address all experts, both male and female.



Determinations of New York State Comm'n on Judicial Conduct: Matter of Jordon, N.Y.L.J., Mar. 2, 1983, 192 [1982- 83]. New York State Judge publicly disciplined for twice addressing a female attorney as "little girl."



Final Report of Ninth Circuit Gender Bias Task Force, 67 S. Cal. L. Rev. 745, 812. References by judges to their secretaries or courtroom deputies as "my girl" reported as incidents of gender bias.



The same holds true in written references to counsel, parties, or witnesses.

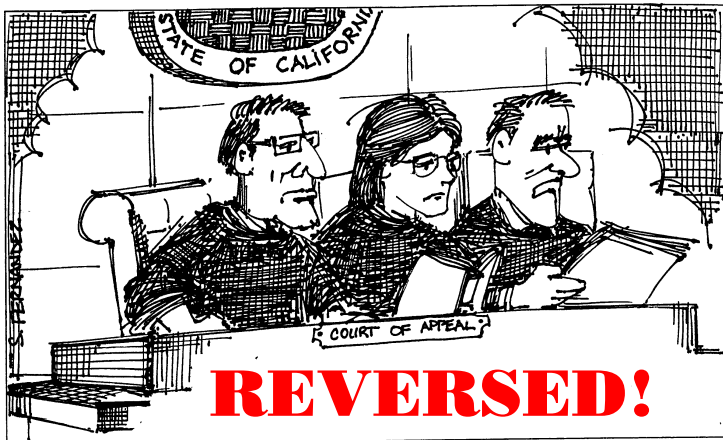


In re Marriage of Iverson (1992) 11 Cal.App.4th 1495, 1499 - 1500. Reference to wife in marital dissolution opinion as a "lovely girl" "...shows gender bias toward her as a witness. The judge did not use a similar description for [the husband]."



Avoid remarks or conduct that reflect stereotypical attitudes about how men and women act.

- ◆ Catchpole v. Brannon (1995) 36 Cal.App.4th 237, 258 - 59. Trial court improperly assumed that a woman's failure to aggressively resist defendant's sexual assault constituted consent.
- ◆ Estate of Vermont v. Forte (1993) 159 Vt. 550, 563 - 65, 624 A.2d 352. Dissent criticizes trial court's description of female prosecutor as too "emotionally involved" and "a fury seldom seen this side of hell."
- ◆ In re Marriage of Iverson (1992) 11 Cal.App.4th 1495, 1500 - 01. Overturning divorce judgment, in part based on the trial judge's biased remarks to the wife, including "Why in heaven's name do you buy the cow when the milk is free?"





Intercede when anyone exhibits behavior which appears to be gender-biased. The failure to do so will send a message that bias is "O.K." in the courthouse. Also, remember that your staff's conduct reflects on the court.

- ◆ Vitko v. Vitko (N. Dak. 1994) 524 N.W.2d 102, 105. Concurring opinion, noting the need for intervention by the trial court in response to counsel's egregious gender bias, observed: "A judge should be vigilant in maintaining the integrity of the judicial system by putting a stop to an attorney's misconduct in a manner that lets the attorney know the remarks or conduct, or both, will not be tolerated."
- ◆ In re Plaza Hotel Corp. (E.D. Cal. 1990) 111 Bankr. 882, 891- 92. Court rebuked debtor's lawyer who referred to the Trustee's female lawyer as "office help" and made other gender-biased remarks during court hearing and threatened him with disqualification if the offensive conduct continued.
- ◆ Matter of Werner (E.D. N.Y. 1991) (cited in Principe v. Assay Partners (1992) 586 N.Y.S.2d 182, 185). Court publicly censured an attorney who addressed a law clerk as "young lady."
- ◆ Principe v. Assay Partners (1992) 586 N.Y.S.2d 182, 184 - 86. Court sanctioned counsel who addressed female opposing counsel on the record as "little mouse," "young girl" and "little lady" during a deposition.



Do not justify preferential treatment in the name of "positive bias." Avoid giving breaks to female litigants or attorneys that males would not receive. Consider whether criminal sentences and family law orders are being made free of a desire to favor a particular gender.



[Metzner v. Metzner](#) (W. Va. 1994) 446 S.E.2d 165, 175 - 76. Dissent in marital dissolution case complaining that "the majority, in awarding [the wife's] one-sided demands, once again denies justice at a husband's expense, reinforcing the sexual stereotype of all men being 'deep pockets' to whom money means nothing."



[United States v. Mast](#) (C.D. Cal. 1989) No. CR-88-0720-AAH-1. Trial court justified significant departure from sentencing guidelines for female convicted of bank robbery on the theory that she was "dominated" by her male partner in crime, noting "it's a fact of life that men can exercise a Svengali influence over women."



Refrain from unnecessary sex designations. It is not appropriate to describe someone as a "female lawyer," "female doctor," or "male secretary."



[In Re Kirby](#) (Minn. 1984) 354 N.W.2d 410, 413 - 14. Judge censored for calling female attorneys "lawyerettes."



Think before commenting on the physical appearance of others and avoid conduct that is overly personal in nature.

REMEMBER: Some practices which might be appropriate in private or social settings are inappropriate in the required level playing field of the courthouse.



[Judge Disciplined for Remarks Offensive to Women Lawyers](#), N.Y.L.J., July 24, 1985, at 1, col. 3. Judge admonished for his practice of referring to the appearance and physical attributes of female attorneys.



Be mindful of bias even in chambers. Do not allow the informality and comfort of chambers to foster biased behavior.



[Geiler v. Commission on Judicial Qualifications](#)(1973) 10 Cal.3d 270. Judge removed for subjecting female attorneys in chambers to a discourse on salacious aspects of cases involving rape and homosexual acts.



[Ryan v. Comm'n on Judicial Performance](#) (1988) 45 Cal.3d 518. Judge removed for misconduct, including telling sexual jokes in chambers to female attorneys.




[In re Gordon](#) (1996) 13 Cal.4th 472. Judge publicly censured on recommendation of the Commission on Judicial Performance for “engaging in ‘conduct prejudicial to the administration of justice’” for making “sexually suggestive remarks to and asking sexually explicit questions of female staff member,” even though “[n]one of the conduct occurred while court was in session or while the judge was on the bench.”

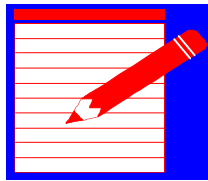



A Final Thought



Language is the most powerful tool in the courtroom. The words we use have meanings beyond the obvious -- they influence attitudes, behavior and perceptions.

 Gender-biased words and phrases dehumanize and demean women, make unwarranted and incorrect assumptions about people, perpetuate harmful stereotypes and lead to unequal treatment.



 The role of judicial officers as dispensers of justice and equality demands that all people be treated with dignity and respect. The use of bias-free words and phrases -- such as “workers’ compensation,” “firefighter,” “reasonable person” and “presiding juror” -- engenders confidence that that role is being fulfilled.